

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Earnest E. Vaughn,

PLAINTIFF

v.

SCDC Health Services, John Doe,

DEFENDANTS

Case No. 6:22-cv-03630-TLW

Order

Plaintiff Earnest E. Vaughn, proceeding *pro se*, filed this civil action against the above-named defendants. ECF No. 1. Plaintiff seeks damages related to injuries allegedly caused by McCormick Correctional Institute's administration of Plaintiff's second dose of a COVID-19 vaccine. *Id.* Plaintiff purports to bring his suit pursuant to the 42 U.S.C. § 1983 for alleged violations of his Eight and Fourteenth Amendment rights. *Id.* He has also filed a motion to proceed *in forma pauperis*. ECF No. 2.

Plaintiff's complaint and motion to proceed *in forma pauperis* was referred to the Honorable Kevin F. McDonald, United States Magistrate Judge, for review pursuant to 28 U.S.C. § 636b(b)(1)(B). The magistrate judge reviewed Plaintiff's complaint pursuant to 28 U.S.C. § 1915, which directs the court to dismiss a complaint if it is frivolous, malicious, or fails to state a claim upon which relief may be granted, as well as when the complaint seeks monetary relief from a defendant who is immune from such relief. The magistrate judge reviewed Plaintiff's request to proceed *in forma pauperis* pursuant to the Prisoner Litigation Reform Act ("PLRA"), 28 U.S.C. § 1915(g) and filed a Report and Recommendation ("Report"), ECF No. 8, recommending that this Court deny Plaintiff's motion to proceed *in forma pauperis*

and direct the Plaintiff to pay the filing fee within twenty-one (21) days. *Id.* at 4.

The matter now comes before the Court for review of the Report filed by the magistrate judge. In the Report, the magistrate judge recommends that Plaintiff's motion to proceed *in forma pauperis* be denied because he is subject to the PLRA's "three strikes" rule, which provides:

In *no event shall* a prisoner bring a civil action or appeal a judgement in a civil action or proceeding under this section if the prisoner has, on *3 or more* prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is *frivolous, malicious, or fails to state a claim* upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury

28 U.S.C. § 1915(g) (emphasis added). The Report notes that Plaintiff has had six actions dismissed for either failing to state a claim or as frivolous or malicious.¹ ECF No. 8 at 3. Plaintiff did not file timely objections to the Report but did ultimately file objections. ECF No. 10. This matter is now ripe for decision.

The Court is charged with conducting a *de novo* review of any portion of the Report to which a specific objection is registered, and may accept, reject, or modify, in whole or in part, the recommendations contained in that Report. 28 U.S.C. § 636. In the absence of objections to the Report, the Court is not required to give any

¹ See *Vaughn v. Adducci, et al.*, C/A No. 8:18-cv-03308-TLW, 2019 WL 8806124 (D.S.C. Jan. 11, 2019), *Report and Recommendation adopted by* 2020 WL 2523995 (D.S.C. May 18, 2020); *Vaughn, Sr. v. Brooks, et al.*, C/A No. 8:18-cv-02065-TLW, at docs. 9; 13 (D.S.C. May 3, 2019); *Vaughn, Sr. v. Abbeville Cnty, et al.*, C/A No. 8:15-cv-01993-TLW, at docs. 21; 24 (D.S.C. July 21, 2015); *Vaughn, Sr. v. Anderson Cnty, et al.*, C/A No. 8:15-cv-01954-TLW, at docs. 15; 19 (D.S.C. June 29, 2015); *Vaughn, Sr. v. Greenwood Cnty. Sheriff's Dep't et al.*, C/A No. 8:07-cv-02022-TLW, at docs. 8; 12 (D.S.C. Dec. 24, 2008); *Vaughn, Sr. v. Greenwood Cnty. Det. Ctr., et al.*, C/A No. 8:07-cv-01385-TLW, at docs. 8; 11 (D.S.C. Aug. 21, 2007); *Vaughn v. McDade, et al.*, C/A No. 8:01-cv-00806-DWS, at docs. 4; 5 (D.S.C. May 8, 2001).

explanation for adopting the recommendation. *See Camby v. Davis*, 718 F.2d 198, 200 (4th Cir. 1983). In such a case, “a district court need not conduct a *de novo* review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

The Court has carefully reviewed the Report, Plaintiff’s objections, and his submitted exhibits. Plaintiff’s objections largely relate to the allegations contained in Plaintiff’s complaint, and Plaintiff does not dispute that he has had more than three actions dismissed either for failing to state a claim or as frivolous. Accordingly, the Court accepts the Report. For the reasons stated by the magistrate judge, the Report, ECF No. 8, is **ACCEPTED**. Plaintiff’s motion to proceed *in forma pauperis* is **DENIED**. The magistrate judge recommends that, should Plaintiff fail to pay the filing fee within twenty-one (21) days, this case should be dismissed. The Court **ACCEPTS** that recommendation. Plaintiff shall have twenty-one (21) days to pay the filing fee, or this case will be dismissed. Should Plaintiff fail to pay the filing fee, the clerk is instructed to notify the Court so that an order of dismissal may be filed.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Senior United States District Judge

December 6, 2022
Columbia, South Carolina